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In re Application of
MICHAELS, Frank
Application No.: 10/531,805
PCT No.: PCT/US2003/033178
Int. Filing Date: 17 October 2003
Priority Date: 17 October 2002
Attorney Docket No.: 59046.000039
For: TRANSMUCOSAL ADMINISTRATION
OF AGGREGATED ANTIGENS

DECISION

This is a decision on the petition to withdraw the holding of abandonment filed 28 January 2008. The papers are then treated as a renewed petition under 37 CFR 1.42.

BACKGROUND

On 08 September 2006, a decision dismissing applicant's petition under 37 CFR 1.42 was mailed. The declaration was regarded as not to contain all of the information required by 37 CFR 1.497(a) and (b). Applicant was given two months to respond with extensions of time available under 37 CFR 1.136(a).

On 27 November 2007, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) for failing to respond to the decision mailed 08 September 2005.

On 28 January 2008, applicant filed the subject petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, a declaration executed by the legal representative of the sole inventor and exhibits A - C.

DISCUSSION

Petition to Withdraw the Holding of Abandonment

Applicant claims that the decision mailed 08 September 2006 was never received and have filed the subject petition to withdraw the holding of abandonment.

The showing required to establish the failure to receive an Office communication consists of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact

10/531,805

that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.

The statements in paragraphs three and four of the Spiegler declaration listed as exhibit A have been interpreted as meeting the requirements of items (1) and (2) above. If this is not correct, applicant should immediately contact the Office.

Regarding item (3), applicant provided a copy of the master log (exhibit B) for the period of 4-8 November 2006. Applicant states that the decision, if received, would have been entered into the docketing system on 08 November 2006, at the end of the two-month period to reply. A review of the redacted log shows no entry for the above-captioned application.

Applicant also provided a redacted copy of the USPTO mail log record (exhibit C) for all incoming mail from 06 September 2006 through 07 December 2006. Again, there is no indication that the decision was received.

This evidence is sufficient to satisfy item (3) above. Applicant has met all of the requirements required to establish nonreceipt of an Office action.

CONCLUSION

For the reasons noted above, applicant's petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 27 November 2007 is hereby **VACATED**.

Renewed Petition Under 37 CFR 1.42

In response to the decision filed 28 January 2008, applicants have furnished a declaration executed by Karen Dohm as the legal representative for the deceased joint inventor, Frank Michaels.

The new declaration records the citizenship, residence, and mailing address of the legal representative as required by 37 CFR 1.497(b)(2) and the capacity that Ms. Dohm has executed the declaration. The declaration also lists the citizenship, former residence, and mailing address of the deceased inventor.

This declaration meets the requirements of 37 CFR 1.497(a) and (b).

10/531,805

CONCLUSION

The renewed papers filed under 37 CFR 1.42 are **ACCEPTED**.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 17 October 2003, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 28 January 2008.

This application is being forwarded to the Office of Patent Application Processing for further processing in accordance with this decision.

A handwritten signature in cursive script, appearing to read "James Thomson".

James Thomson
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